



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 19, 2022

IN THE MATTER OF:

Appeal Board No. 624591

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective November 15, 2021, on the basis that the claimant was not capable of work. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant. By decision filed June 14, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant has submitted a copy of the doctor's note that the claimant contends he submitted prior to the adjourned hearing but which the Judge did not receive. At the remand hearing, the doctor's note shall be taken into evidence, and the claimant shall be afforded an opportunity to testify regarding this document. The Judge shall question the claimant with respect to how he requested and obtained the doctor's note, and shall question the claimant with respect to any inconsistencies between the contents of this doctor's note and the claimant's prior testimony and his statements to the Department of Labor as indicated in the documents already in evidence. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of capability of employment, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of capability of employment, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER